

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1179

To be argued by:
SHEILA GINSBERG

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

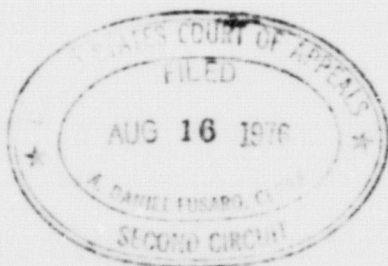
CALVIN YAGID,

Defendant-Appellant

B
Pro S
Docket No. 76-1179

APPENDIX FOR APPELLANT
CALVIN YAGID

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



SHEILA GINSBERG

Of Counsel

WILLIAM J. GALLAGHER, ESQ.
THE LEGAL AID SOCIETY
Attorneys for Appellant
CALVIN YAGID
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

PAGINATION AS IN ORIGINAL COPY

JUDGE CONNER

74 Crim.

A

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U. S.:

VS.

Michael Eberhardt, AUS

CALVIN YAGID

791-1156

For Defendant:

ABSTRACT OF COSTS

AMOUNT

CASH RECEIVED AND DISBURSED

DATE

NAME

RECEIVED

DISB

(12)

Fine,

Clerk,

Marshal,

Attorney,

Commissioner's Court,

Witnesses,

18:1623 Perjury.

(Six Counts)

DATE

PROCEEDINGS

12-30-74 Filed indictment. B/W ordered. Griesa, J. B/W issued.
1-13-75 Deft.(atty. present) Pleads not guilty. Motions returnable in 10 days.
Case assigned to Judge Conner as a related case.(74Cr1215) Deft. released on his own recognizance. Bonsal, J.
1-13-75 Filed warrant of arrest with return by Asst. Agent of F.B.I.
1-29-75 Filed following papers recvd. from Magistrate. Docket sheet, disposition sheet and notice of appearance....
10-9-75 Filed order that deft is to undergo a full medical examination on 10-13-75 by Iraj Iraj, M.D. 142 Joralemon St. Bklyn, N.Y....Conner, J.

CONTINUED ON PAGE NO. 2.

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
11-10-75	Filed Order authorizing deft Calvin Yagid, to undergo a full and complete medical examination. CONNER, J.		
11-12-75	Filed Order authorizing deft to undergo a full & complete mental examination by David Abrahamsen, M.D. CONNER, J.		
11-21-75	Filed Order authorizing deft to undergo full & complete examination on 12-02-75 at 120M by David Abrahamsen, M.D. CONNER, J.		
1-12-76	Deft. & atty. present... Suppression hearing - Re competency		
1-13-76	Suppression hearing cont'd & concluded motion DENIED.... JURY TRIAL BEGUN		
1-14-76	Trial cont'd.		
1-15-76	Trial cont'd.		
1-16-76	Trial cont'd. and concluded Jury verdict GUILTY ALL CTS. Sent. adjd to 2-27-76 9:30 a.m. Bail fixed at \$5,000 P.R.B..... CONNER, J.		
1-16-76	Filed appearance bond in amount of \$5,000 unsecured.		
2-27-76	Filed Commitment (Atty. xxxx Lawrence Hokeiser, present) The deft is committed pursuant to Section 4208(b), Ti. 18, U.S. Code for study report and recommendations as described in Section 4208(c). This commitment deemed to be for maximum sentence prescribed by law, to wit: THIRTY YEARS, unless altered pursuant to said section, upon receipt of report and recommendations. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the Court within THREE MONTHS. Deft to surrender to the U.S. Marshal, March 15, 1976 at 10:30 a.m. Room 506..... Conner, J..... Ent. 3-1-76-----		
3-12-76	Filed notice of appeal from Judgment of 2-27-76 copy given to U.S. Atty. and mailed to deft c/o atty.		
3-15-76	Filed Affidvt. and Notice of Motion for Stay of Execution of sentence and for bail pending App'l.... Ret. 3-15-76		
3-16-76	Deft. present... (Handwritten notes)		
3-17-76	Deft. present... (Handwritten notes)		
3-18-76	Deft. present... (Handwritten notes)		
3-19-76	Deft. present... (Handwritten notes)		

DATE	DESCRIPTION
4-2-76	Filed notice that the original record on appeal has been certified and transmitted to the U.S.C.A.
4-12-76	Filed transcript of record of proceedings, dated 1-1-76
4-13-76	Filed transcript of record of proceedings, dated 1-1-76
4-14-76	Filed transcript of record of proceedings, dated 1-1-76
4-15-76	Filed transcript of record of proceedings, dated 1-1-76
4-14-76	Filed order...Defts motion to proceed in forma pauperis is granted...Conner, J. m/n
4-20-76	Filed notice that the supplemental record on appeal has been certified and transmitted to the U.S.C.A.
6-7-76	Filed Notice that Supplemental Record (SECOND) on appeal has been Certified and transmitted to the USCA for the 2nd Circuit this day.
6-21-76	Filed notice that the supplemental record on appeal has been certified and transmitted to the U.S.C.A. this 21st day of June-76
6-25-76	Filed transcript of record of proceedings dated November 5-1975.
6-28-76	Filed notice that the 4th supplemental record on appeal has been certified and
July 7-76	Filed transcript of record of proceedings, dated Nov - 16-1975.
July 7-76	Filed transcript of record of proceedings, dated Nov - 19-1975.
7-7-76	Filed Notice that 5th supplemental record on appeal has been Certified and transmitted to the USCA 2nd Circuit this day.
6-21-76	Filed transcript dated Jan 13, 14, 15, 16 and Feb 27, 1976
6-21-76	Filed transcript dated Apr 12, 13, 1976
7-19-76	Filed transcript of record of proceedings dated Sept. 3, 1975.

MICROFILM

DEC 31 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74 CRIM. 1213

-----x
UNITED STATES OF AMERICA :

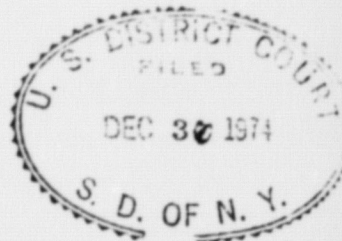
- v - :

CALVIN YAGID, :

Defendant. :

INDICTMENT

74 Cr.



-----x
The Grand Jury charges:

1. On or about October 7, 1974, in the Southern District of New York, CALVIN YAGID, the defendant, having duly taken an oath as a witness that he would testify truly before a Grand Jury of the United States, duly impanelled and sworn in the United States District Court for the Southern District of New York, and inquiring for that District into violations of federal law, unlawfully, wilfully and knowingly and contrary to said oath did make false material declarations as hereinafter set forth.

2. At the time and place aforesaid, the aforesaid Grand Jury was conducting an investigation into possible violations of United States laws prohibiting extortion (Title 18, United States Code, Sections 892, 893 and 894), loansharking (Title 18, United States Code, Section 1962(c)) and other federal statutes.

3. It was material to the aforesaid investigation that the Grand Jury ascertain:

(a) CALVIN YAGID's knowledge of and involvement concerning situations wherein usurious loans had been granted or had been the subject of collection; and

(b) CALVIN YAGID's knowledge of and involvement concerning situations wherein extortionate means were employed in the granting or collecting of loans.

4. On or about October 7, 1974, the defendant CALVIN YAGID appearing as a witness under oath before said Grand Jury did testify falsely with respect to the aforesaid material matters as follows:

COUNT ONE

Q Do you know that Whitey Liebowitz has lent money to various individuals?

A His personal business, I -- I don't know anything about.

Q I am not asking you to comment on whether it is his personal business. I am asking you a question.

Do you know anybody --

A Not to my recollection.

Q Let me finish my question.

Do you know anybody to whom Whitey Liebowitz has lent money?

A Not to my recollection.

(Title 18, United States Code, 1623)

COUNT TWO

Q You have been in the garment district for at least several years, is that correct?

A Yes.

Q During those several years, you have come to know of people that lend money at various rates of interest, have you not?

A No, sir, not to my recollection.

Q You don't know of anybody who has lent money to any other individual at certain rates of interest?

A Outside of myself, no.

(Title 18, United States Code, Section 1623)

COUNT THREE

Q During the last two years, have you attempted to collect any money from this Mr. Whellan?

A No, sir.

.

Q I am asking you a very simple question. That is, in the last two years, have you ever had a conversation with Mr. Whellan in which you indicated that he owed certain money to another party and you were there to collect it?

A Not that I recall, no. I never collect -- I never went to him to collect any money for anybody. That's not true.
(Title 18, United States Code, Section 1623)

COUNT FOUR

Q Do you know of anybody that has borrowed money from Mr. Lebensfeld?

A Mr. Lebensfeld is in the textile business.

Q Mr. Yagid, I did not ask you that. I asked you if you knew of anybody that --

A Not that I can recall. Not that I don't remember. You have to ask Mr. Lebensfeld if anybody owes him money.

Q Mr. Yagid, I am asking you if you know of anybody who borrowed money from Mr. Lebensfeld.

A Not that I recall.

.

Q Mr. Yagid, I believe I just asked you whether or not you knew of anybody that owed money to Seymour Lebensfeld.

A Personally?

No, I never -- no, not that I could recall.

.

Q Have you known any other individual besides yourself who has ever owed money to Seymour Lebensfeld?

A Do I know -- not that I recall. Seymour Lebensfeld as far as -- it's his partner who I believe his partner owed him -- when he sold his business, his partner should owe him money.

Q Besides yourself, do you know of any individual who has ever owed money to Seymour Lebensfeld?

A Not that I could recall. Maybe there might have been a conversation in front of me, but I don't recall these things. It's none of my business.

.

Q Do you know anybody who ever borrowed any money from Mr. Lebensfeld?

A Not to my recollection.

.

Q So you don't know anybody that owed Mr. Lebensfeld money?

A Not that I recall.

(Title 18, United States Code, Section 1623)

COUNT FIVE

Q Have you ever had any discussions with anybody in which you discussed with this other party the fact that money was owed to Mr. Lebensfeld?

A Not that I could recall.

.

Q Do you know Robert Kolbert?

A Who?

Q Robert Kolbert.

A Not that I know of. Who is Robert Kolbert?

Q You don't know Robert Kolbert?

A Who is Robert Kolbert?

Q I am just asking you who is Robert Kolbert.

Do you know Robert Kolbert?

A Not offhand. If you showed me a picture, maybe.

MR. EBERHARDT: Could I please have this marked as Grand Jury's Exhibit No. CY-2 of this date.

(Photograph, marked Grand Jury's Exhibit CY-2 as of this date.)

Q Mr. Yagid, I show you Grand Jury's Exhibit No. CY-2 and ask you if you know that individual.

A It looks like I've seen him around. I don't know if I've ever spoken to him.

Q You have seen him around?

A I can't specifically say that I know him or I don't know him quite honestly.

.

Q Have you ever had any discussions with this gentleman in Grand Jury's Exhibit CY-2 in which you discussed the fact that this gentleman owed money to either Mr. Lebensfeld or to yourself?

A To me, the man owes me nothing. I don't recall discussing anything with this man, anything like that with this man.

What's his name?

Q Robert Kolbert.

A How do you spell that?

Q I believe it's K-o-l-b-e-r-t.

Did you ever have a conversation with this gentleman in Grand Jury's Exhibit CY-2 in which this individual attempted to settle a debt in the amount of \$6,000 for the amount of \$2,000?

A Not that I could recall.

Q I am asking you. Yes or no.

A This man never owed me any money.

Q Did this man ever owe any money to Seymour Lebensfeld?

A Not that I know of. I don't recall.

.

Q Were you ever present during any conversation with Robert Kolbert, the individual in Grand Jury's Exhibit CY-2 in which Robert Kolbert discussed with you or Mr. Lebensfeld the fact that Mr. Kolbert owed money to Mr. Lebensfeld?

A Not that I could recall. I don't even know nothing about this fellow. He looks familiar, but I don't even recall even knowing this man.

.

Q Have you ever been involved in a conversation in which anybody discussed with you and Mr. Lebensfeld the fact that this other individual owed money to Mr. Lebensfeld?

A Not that I could recall.

.

Q Have you ever tried to collect any money that was owed?

A Why would I collect any money --

Q I am just asking you.

A Mr. Lebensfeld is in the textile business.

I am sure plenty people -- not that I know of.

Q Mr. Yagid, I am asking you for a simple --

A Not that I recall. Not that I --

Q So you don't know anybody that owed Mr. Lebensfeld money?

A Not that I recall.

.

Q Have you ever attempted to collect money from anybody who owed money to Mr. Lebensfeld?

A Why would I want to collect any money -- no, not that I can recall.

.

Q Were you aware that Seymour Lebensfeld had lent money to Robert Kolbert at certain rates of interest?

A Not that I know. What would I know about that?

.

Q Have you ever been introduced to anybody for the purpose of being introduced as the person who would collect loan payments owed to Seymour Lebensfeld?

A Not that I could recall.

(Title 18, United States Code, Section 1623)

COUNT SIX

Q Do you know Steve Adelman?

A Who?

Q Steve Adelman, A-d-e-l-m-a-n.

A There is lots of Steves. I don't know the name Adelman.

Q You don't know Steve Adelman?

A I don't know the name Adelman. I know lots of Steves.

(Title 18, United States Code, Section 1623)

5. The aforesaid testimony of CALVIN YAGID, the defendant, specified in Counts One through Six, as he then and there knew, was untrue.

(Title 18, United States Code, Section 1623)

FOREMAN

Paul J. Curran
PAUL J. CURRAN
United States Attorney for the
Southern District of New York

United States District Court
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

CALVIN YAGID,

Defendant.

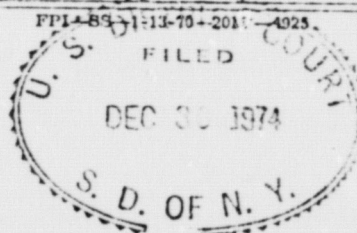
INDICTMENT

PAUL J. CURRAN

United States Attorney

A TRUE BILL

May 14 1974
Foreman



12-30-74 B/W ordered

Judge Conner

Jan 12, 1976 Deft. (att'y present) Suppression
Hearing - Re: Competency
Jan 13, 1976 Suppression Hearing Cont'd.
9 Concluded motion Denied WCC

Jan 13, 1976 Jury Trial Began

Jan 14, 1976 Trial Cont'd

Jan 15, 1976 Trial Cont'd

Jan 16, 1976 Trial Cont'd & Concluded

Jury Verdict - Deft. Guilty in

Counts 1, 2, 3, 4, 5 & 6. Sent Adjud

to 2/27/76 - 9:30 A.M. Bail fixed at

\$5,000.00 P.R.B. (Conner, J)

(AW)

(over)

Feb 27, 1976 DEFT (Atty Lawrence Hochkeisen present)
DEFT committed pursuant to Section 4208 (b), Title 18
U.S. Code, for study & report & recommendations as
described in section 4208(c). This committed deemed
to be the maximum sentence prescribed by Law,
to wit: Thirty (30) years, unless altered pursuant
to said section, upon receipt of report and
recommendations the results of such study,
together with any recommendations which the
Director of the Bureau of Prisons believes
would be helpful in determining the disposition
of the case, shall be furnished to the
Court within THREE (3) MONTHS. ~~File to be~~
~~Section 4203~~ DEFT. to surrender to the
U.S. MARSHALL, March 15, 1976, At 10.30 A.M.
Room 506 (Pinner. J.)

(RW)

22

THE COURT: All right.

23

Ladies and gentlemen of the jury:

24

We have finally come to that part of the case where

25

all the evidence is in, the attorneys have presented their

final arguments, and you are about to decide the facts of the case. As members of the jury, you are the sole and exclusive judges of the facts. You alone pass on the weight of the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the evidence, and you draw such reasonable inferences as may be warranted by the testimony and exhibits. My function at this point is to instruct you as to the law applicable to the case. It is your duty, indeed your sworn duty as jurors, to accept the law as I state it to you in these instructions, and to apply that law to the facts as you find them. Your verdict is the logical result of applying to the facts as you find them the legal standard and tests which I give to you in this charge. Your findings of fact will be based on your recollection of the evidence in the case. It is your recollection which governs. Anything that counsel may have said in their final arguments or in their opening statements or at any point during the trial is not evidence in the case, and should not be accepted by you in preference to your own recollection of the actual evidence. Likewise, anything that I say in this charge, or anything that I said at any time either during the trial or before the trial is not evidence in the case; and shouldn't be substituted by you for your own recollection of the evidence.

1 mb/lf/20

2 As I have told you repeatedly, the only thing that
3 you should consider in determining the facts is the evidence
4 which has come to you through the testimony of the witnesses
5 on the witness stand, through the exhibits introduced into
6 evidence, including the tape recordings and the transcripts
7 of the tape recordings, and any stipulations of fact made
8 by counsel, that is any agreements between counsel as to
9 what the facts are. Those agreements, of course, are binding
10 upon you. They take the place of evidence. From time to
11 time during the trial I have been called upon to pass upon
12 certain objections made by counsel, and I have made certain
13 other remarks governing the proceedings of the trial. Those
14 statements should not be considered by you at all in determin-
15 ing your verdict except in one respect that I will mention
16 in a moment. My statements aren't evidence in the case,
17 and please don't try to draw any inference or make any
18 assumptions about what I think about the evidence or what
19 I think about the merits of the government's case or the
20 merits of any of the defense arguments on the basis of
21 anything I may have said. My comments were intended to
22 relate only to matters of law, and those matters need not
23 concern you at all in determining the facts of the case.

24 Now the one exception to ignoring my remarks would
25 be if I have told the jury to disregard a statement of a witness.

mb/lf/21

or to disregard something that counsel said, then, of course, you should pay attention to that and should disregard the statement by counsel or by the witness; and, of course, you should not forget what I am telling you now insofar as it relates to the law. As I have indicated, the instructions that I give you as to the law are binding upon you and you must follow them whether you have different ideas as to what the law ought to be or not.

Now as I told you at the outset and even at several points during the trial, in this as in every criminal case, the government has the burden of proof. The defendant is presumed to be innocent until he's been proven guilty beyond a reasonable doubt. The defendant does not have to introduce any evidence at all. He can remain absolutely silent, and stand or fall on whether the government has succeeded in proving a case against him beyond a reasonable doubt. The defendant in this case chose not to take the stand, but you should not try to draw any inference at all from the fact that he did not testify. The Constitution gives him the right to remain silent, the right not to give evidence against himself, or evidence of any kind in a case in which he is charged as a defendant, and that right to remain silent would be absolutely worthless if a jury could assume that merely because he chose to exercise that right he must

mb/lf/22

be guilty; so ignore that fact altogether, and measure the evidence for the government and against the government which was actually introduced and determine whether you are satisfied beyond a reasonable doubt that the government has proven each of the offenses charged.

The indictment in this case charges six different instances of false statement to the grand jury. These instances constitute six separate counts in the indictment. Each count charges a separate offense, a separate violation of the statute against giving false testimony to a grand jury. You must return a separate verdict of guilty or not guilty on each of those six counts. Each count is in effect a separate indictment charging a separate offense, and each offense that is charged must stand or fall on its own merits, so you must return an independent verdict on each of the six counts, that is guilty or not guilty on each; and the verdict on each count must be unanimous, that is, all twelve of the jurors who will participate in your deliberations must agree on the verdict as to each count.

Now I have indicated that the government has the burden of proving that the defendant is guilty beyond a reasonable doubt. A reasonable doubt is a doubt based on reason, as the words imply. In other words, it is a doubt which would cause a reasonable man in the conduct of his own

2 affairs to hesitate before taking action. A reasonable doubt
3 can be based either upon evidence or upon a lack of evidence.
4 It is a doubt which appeals to your judgment, your reason,
5 your common sense, and your experience. A reasonable
6 doubt is not a mere caprice or whim or a speculation. It is
7 not an excuse to avoid an unpleasant duty. It should by
8 all means not be confused with sympathy for the defendant,
9 nor would a speculative or an imaginative qualm or
10 misgiving be a reasonable doubt. It is not necessary for
11 the government to prove the guilt of the defendant to
12 a mathematical certainty or beyond all possible doubt. If
13 that were the rule few, if any, defendants would ever be
14 convicted no matter how guilty they might be, for in the
15 practical world there are few facts that are susceptible
16 of proof to an absolute certainty.

17 As a consequence, the law is that in a criminal case
18 the defendant need not be proved guilty beyond all possible
19 doubt but only beyond any reasonable doubt.

20 If after a fair, impartial and careful consideration
21 of all the evidence you are convinced of the guilt of the
22 defendant, of the offense charged in any particular count
23 beyond a reasonable doubt, you must vote guilty on that
24 count regardless of what your personal feelings or sympathies
25 may be, or regardless of any personal biases or prejudices you

may have for or against either side.

On the other hand, if after a fair and impartial and careful consideration of all the evidence you do have a reasonable doubt as to the defendant's guilt with respect to a particular count, you must vote not guilty on that count.

Now let's turn to the indictment itself. I want to repeat what I said to you at the outset and at several other points during the trial. The indictment is not evidence in the case. It is merely a charge. It is what the government thinks it can prove against the defendant. It is the paper which starts a criminal action. The indictment is returned by a grand jury but the grand jury does not have to satisfy the same standards of belief of the defendant's guilt beyond a reasonable doubt that you have to be satisfied of. So do not consider that the mere fact that the government has obtained from a grand jury an indictment of the defendant is in any way suggestive of the defendant's guilt. It is merely the instrumentality by which this proceeding got started, and it spells out what the defendant charges or accuses the defendant of having done.

MR. HOCHHEISER: You misspoke, your Honor.

THE COURT: Excuse me, what the government charges the defendant with having done.

1 I am not going to read the entire indictment. I
2 am merely going to summarize it briefly for you. The separate
3 counts were read substantially in their entirety by Mr.
4 Sudler, the prosecuting attorney, in his summation; and I
5 just want to try to sum up the nature of the offenses that
6 are charged in the indictment, to help you get the various
7 parts of the testimony straight in your mind so that you
8 may give them each separate and independent consideration.
9 The indictment charges in general terms that Calvin Yagid,
10 on October 7, 1974, appeared before a grand jury in this
11 district which had been duly impaneled and sworn, and was
12 inquiring into violations of federal law, specifically,
13 activities involving loan sharking and extortion in the garment
14 district or garment industry.

15 It charges further that it was material to that
16 investigation of the grand jury to ascertain the defendant's
17 knowledge concerning the making of usurious loans and the
18 use of extortionate means in the collection of such loans.

19 Then there follow six counts and each count charges
20 false statements in a particular portion of the testimony
21 of Calvin Yagid before that grand jury. Those excerpts from
22 the testimony were read in full by Mr. Sudler, and I won't
23 read them again. I just want to summarize them very
24 briefly, but I am sure you will want to read the actual
25

1 mo/1f/26

2 testimony as it is quoted in the indictment itself, and not
3 rely on my summary of what the testimony was.

4 Count one particularly involved the question to
5 defendant, "Do you know anyone to whom Whitey Liebowitz
6 has lent money?"

7 Now, the government charges that the falsity of
8 the defendant's answers to that line of questioning is
9 shown by the testimony of Mr. Whellan. You will have to
10 determine whether beyond a reasonable doubt the falsity of
11 that testimony has been shown, and you will also have to
12 find, as I will explain to you in a minute, the other ele-
13 ments of the offense of giving false testimony.

14 Count two of the indictment involves particularly
15 the question, "Whether you know anyone who has lent money
16 to anyone else at certain rates of interest." This is a
17 very broad question not limited to a particular lender or
18 lendee; but anyone who has lent money to anyone else at
19 certain rates of interest. Of course, considering the subject
20 matter before the grand jury, I am sure the import of the
21 question was do you know anyone who has lent such money
22 either at usurious rates or interest or has used extortionate
23 means in the collection of any loans. Now all of the testi-
24 mony that the government introduced from Mr. Whellan, from
25 Mr. Colbert, and the tapes of the conversations between Whellan

and Yagid and between Colbert and Yagid are, of course, relevant to that count two, because of the very breadth of the question that was asked.

Count three particularly concerns the question to the defendant, "Have you attempted to collect money from Whellan?"

Now the government charges that the falsity of the defendant's answers to that line of questioning are shown by the testimony of Whellan and by the tape of the conversation between Whellan and Yagid that took place at the Whellan Coat Company. You will have to determine whether the government has proved that beyond a reasonable doubt along with the various other elements which I will explain to you in a moment.

Count four concerns particularly the question, "Do you know anyone besides yourself who owed money to Seymour Lebensfeld?"

Count five involves the question or questions: "Do you know Robert Colbert?" and "Do you know whether Colbert owed money to Lebensfeld?" And, "Did you ever attempt to collect money from anyone who owed money to Lebensfeld?"

The government charges that the falsity of the defendant's answers to the questions contained in counts four and five is shown by the testimony of Robert Colbert and

1 mb/lf/28

2 by the tapes of the conversations between Colbert and Yagid;
3 particularly the conversation which took place on October
4 3, 1973, at Damone's Restaurant and the conversation which
5 took place in the vicinity of the same restaurant a week
6 later on October 10, 1973. You will have to determine
7 whether the government has proved that falsity beyond a
8 reasonable doubt, along with the other elements which I
9 will explain to you in a moment.

10 Count six involve the question of, "Do you know
11 Steve Adlman?" And the testimony -- and the government
12 charges that the falsity of the defendant's answers to that
13 line of questioning are shown by the testimony of Stephen
14 Adlman and by the tapes of the conversations between Colbert
15 and Yagid.

16 Now as I say, I have only summarized the portions
17 of the testimony that the government charges to be false.
18 I refer you to the actual testimony itself as set forth
19 in the six counts of the indictment, and also if you want
20 to see the entire testimony before the grand jury, it's made
21 available to you, there are twelve copies here which the
22 government has had reproduced which you may have with you
23 in the jury room just as you may have any of the exhibits
24 available to you for your deliberations.

25 Now the particular criminal statute which the

1 mb/lf/29

2 defendant is charged with having violated in this case is
3 section 1623 of Title 18 of the United States Code. That
4 section is entitled "False Declarations Before Grand Jury
5 or Court," and the statute reads in pertinent part as
6 follows:

7 "Whoever under oath in any proceeding before
8 any court or grand jury of the United States knowingly makes
9 any false material declaration is guilty of a crime."

10 This crime is sometimes referred to by the shorthand
11 name of perjury; and if I refer to it by perjury in my
12 charge, you will understand that I am referring to the crime
13 of false declarations before a grand jury or a court as
14 I have just defined it for you in the wording of the statute
15 itself. Perjury is the willful giving of false testimony
16 as to a material matter before a competent tribunal while
17 under oath.

18 I have defined that so that the crime includes
19 four separate elements, and in order to establish its burden
20 of proof against the defendant, Calvin Yagid, on each of the
21 six perjury counts, the government must establish beyond a
22 reasonable doubt four essential elements with respect to
23 each count. First, that on or about October 4, 1974,
24 Calvin Yagid took an oath to testify truthfully before a
25 grand jury sitting in the Southern District of New York,

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which is here, and that that grand jury was authorized by law to administer oaths. Second, that Calvin Yagid made false statements as to matters about which he testified under oath as set forth in the indictment.

Third, that some false statements were willfully and knowingly made in that at the time the defendant made the statements he knew them to be false.

And fourth, that the matters as to which it is charged he made the false statements were material to the issues under inquiry by the grand jury.

Now let's consider these four elements one at a time. The first element, as you may recall, was that he took -- that is the defendant took an oath to testify truthfully before a grand jury which was sitting in this district and which was authorized by law to administer oaths. There is no dispute here that the defendant did take an oath to testify before a grand jury, and that the grand jury was authorized by law to administer oaths.

I want to skip to the fourth element, and that is that the matters as to which it is charged defendant Calvin Yagid made the false statements were material to the issues under inquiry by the grand jury. You have heard the testimony of the forelady of that grand jury concerning the matters under inquiry by the grand jury. We have also available in

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the indictment the subject matter of the questions which were put to the defendant Calvin Yagid; and I charge you as a matter of law that the questions that were asked were material to the subject under inquiry by the grand jury, so you need not concern yourself with the first and fourth elements of the offense of perjury. You need only consider the second and third elements.

Those elements, to recapitulate, were, first, was any part of the testimony given by the defendant false? And second, did the defendant know at the time he gave the testimony that it was false, and did he give that testimony willfully?

With regard to the first of those two questions, that is, the falsity of the testimony, the government must establish beyond a reasonable doubt the existence of facts which show that the defendant's testimony was false. In other words, the government must establish what it maintains are the true facts.

The government does not have to show that at the time he testified before the grand jury the defendant knew what kind of evidence would be introduced here to show that his testimony was false. He need only have known that the testimony was, in fact, false. The proof of falsity of the defendant's statements before the grand jury may be made either

by the testimony of other witnesses or by the tape recordings and transcripts of tape recordings which were introduced in evidence, and, by any other evidence which is sufficient to convince you beyond a reasonable doubt that the testimony of the defendant was, in fact, false. In order to prove falsity the government does not have to show that everything the defendant said was false. It is sufficient to show that merely some of the testimony cited in the particular count of the indictment under consideration is false.

As you will see, in a particular excerpt of the testimony that is quoted in any particular count, there may be several statements made by the defendant. The government need prove only beyond a reasonable doubt that one of those statements was false.

The other element which you will have to find beyond a reasonable doubt in order to find the defendant guilty as to any particular count, is that the defendant in giving his false testimony did so knowingly and willfully. As you will recall, the statute which I read you provides that the defendant is guilty of the crime of making false declarations only when he "knowingly makes any false material declaration." There is nothing mysterious or complicated about the words "knowingly and willfully." Knowingly simply means with knowledge, as opposed to doing something ignorantly or without

2 knowledge. Willfully means consciously, intentionally, and
3 deliberately, and in the exercise of one's free will as
4 opposed to do something inadvertently or accidentally or
5 unintentionally. If the defendant, through some innocent
6 mistake, made a misstatement, he wouldn't be guilty of the
7 crime of perjury. You have got to find that he knew at
8 the time he made a false statement that it was false, and
9 that he did it willfully, that is, deliberately, and in the
10 exercise of his free will. It isn't sufficient to convict
11 a man of perjury to show that he has a bad memory, or that
12 he's made a slip of the tongue. You have got to find that
13 he knew what he was saying was wrong at the time he said
14 it and that he said it willfully.

15 Now, the government does not have to show that
16 the defendant knew he was breaking a particular criminal
17 statute, or even that he was breaking the law at all before
18 he can be convicted of a crime. The government does not have to
19 show that the defendant intended to profit at the expense
20 of the government or any other person, nor do you have to
21 go into the defendant's personal or private reasons for
22 giving false testimony. If after considering all the evidence
23 in accordance with these instructions you come to the con-
24 clusion that beyond a reasonable doubt the defendant knowingly
25 and willfully gave false testimony, you need not consider why

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2 he gave it.

3 We have here by the defendant an argument that at
4 the time he gave the testimony, his mental and emotional
5 state was such that he should not be found guilty of having
6 willfully made false statements. There was testimony by
7 a psychologist, and there was testimony by others, that the
8 defendant has been under emotional strain. There has been
9 testimony on behalf of the government that in the opinion
10 of a psychiatrist, the defendant has been at least to some
11 extent exaggerating or faking his symptoms, and that at the
12 time he gave the testimony before the grand jury he knew
13 exactly what he was doing.

14 You will have to determine, as a matter of fact,
15 whether or not at the time he testified before the grand
16 jury on October 7, 1975, the defendant understood the ques-
17 tions and understood what he was saying in answer to those
18 questions, and was sufficiently in command of his mental
19 and emotional faculties that he knowingly and willfully gave
20 false testimony.

21 If you find that his mental or emotional state
22 was such that he did not understand the questions or did
23 not understand what he was saying in answer to the questions,
24 or didn't appreciate the falsity of his answers, then, of
25 course, you will find that the defendant did not willfully

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give false testimony. The burden of proof on this issue, since it relates to the matter of willfulness, which is one of the four elements that I defined for you earlier, is a burden which is on the government. You must find beyond a reasonable doubt that the defendant's testimony before the grand jury was knowingly and willfully false, and one of the factors which you will, of course, consider is his mental and emotional state at the time.

There has also been some argument concerning the motive of the Assistant United States Attorney, Mr. Eberhardt, in subpoenaing the defendant to appear before that grand jury. In his summation, defendant's counsel, Mr. Hochheiser, suggested that Mr. Eberhardt was not interested in getting before the grand jury the testimony which the defendant could have given, but instead was acting out of the ulterior motive of attempting to entrap the defendant into a situation in which he would commit perjury. I charge you as a matter of law that the law recognizes no excuse or justification for perjury. A witness is compelled by law to testify truthfully under oath before a competent tribunal as to any matter which is material to the investigation of that tribunal. I have charged you already that the grand jury before which Mr. Yagid was called was a competent tribunal, that he took an oath to testify truthfully

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before that tribunal, and that the questions which he was asked as reflected in the sixth count of the indictment were all material to the subject matter under investigation by the grand jury.

Thus you need not consider the motivations of the Assistant United States Attorney in calling the defendant to testify before the grand jury if you find that the defendant's answers to the material questions were false, and that he knew that they were false, and willfully gave those false answers.

In the course of your deliberations, you will be called upon to determine the credibility of the witnesses, because there is conflicting testimony in a number of respects. In determining the credibility or believability of a witness, you use your common sense. To use an everyday expression, you size up the witness. What kind of a person is he? How did he behave on the stand? Did he appear frank and forthright or was he argumentative and evasive? Did he seem to be a disinterested and unbiased witness, or did he appear to have a bias or prejudice which caused him to slant his testimony in any respect? Did his testimony make logical sense to you? Was he in a position to have personal knowledge of the facts about which he testified? If he expressed opinions, was he in a position to have all of

the facts upon which to form such opinions? To what extent was his testimony corroborated or reinforced by other testimony or evidence in the case, or to what extent did it conflict or was it contradicted by other evidence in the case? Did the witness have any motive or incentive for giving untrue or slanted testimony, that is, did he have any personal interest in the outcome of the case?

We have had testimony here not only of fact witnesses but also of expert witnesses who gave opinion testimony, and in determining the credibility and the weight to be given opinion testimony of the expert witnesses, you use the same procedure that I indicated for ordinary fact witnesses. You determine how they behaved on the stand, whether they were frank and forthright, or argumentative or evasive, whether their testimony seemed to be absolutely unbiased or whether it appeared to be slanted in favor of or against one of the parties, did they have any motive or incentive for giving false testimony, to what extent did their testimony make common sense to you, to what extent was it corroborated or reinforced and to what extent was it contradicted by other evidence in the case.

If you find that a witness testified falsely as to any one matter, or any number of matters, you may decide to disregard all of his testimony as unworthy of your belief,

or you might decide to give the rest of his testimony full credence. It is up to you to decide the effect on the remainder of the man's testimony, in view of your finding that he testified falsely in one or more respects. It is entirely up to you. In determining your verdict, you should consider not only direct evidence but also circumstantial evidence. Circumstantial evidence is proof of one fact by evidence of another fact which has a logical relation to the first fact. To give you an example: If a man comes inside the door and says, "It's raining outside, I have just come in out of the rain, and it's pouring," that would be direct evidence because here is an eyewitness who has just observed the rain, and is telling us expressly and specifically that it's raining outside. Suppose another man comes in and says not a word but he is wearing a raincoat that is dripping water and he is carrying an umbrella which is dripping water. That would be circumstantial evidence that it is raining outside. In determining your verdict, both direct and circumstantial evidence should be considered by you in reaching that verdict.

As jurors, you have taken an oath to find the facts fairly and impartially, without prejudice and without sympathy, and to follow the instructions which I give you as to the law. An important part of that oath is to leave

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entirely up to the Court the question of any punishment that might be imposed on the defendant if you should find him guilty as to any of the counts. That should not concern you at all. If the defendant is entitled to leniency, it's my duty to weigh all the factors and to give him such leniency as he is entitled to. So don't speculate on what kind of punishment he might receive. You find him guilty or not guilty, based upon the facts of the case, tested by the legal standards which I have given you in this charge.

The purpose of your jury deliberation is to try to reach a unanimous verdict, that is, a vote which represents the vote of all twelve of the deliberating jurors. In the course of your deliberations you are supposed to exchange your views, to listen carefully and with an open mind to what your fellow jurors are saying. Just because you originally express one point of view, please don't because of pride or stubbornness cling to that point of view if after listening to the points of view of your fellow jurors you can conscientiously adopt the point of view that they express. Don't feel that you must, as a matter of pride, defend your original point of view simply because you have expressed it. On the other hand, if after listening with an open mind to the points of view of your fellow jurors, you still conscientiously feel that you were right to begin with or that you cannot in

good conscience agree with other alternative points of view that have been suggested, don't feel that you have to yield merely because you are outnumbered; the ultimate verdict must represent the conscientious vote of all twelve jurors but the purpose of your deliberation is to try to reach a single verdict on each count which does represent such conscientious vote of all twelve jurors.

Mrs. Schneider, having taken the position of the first juror who was excused, will be the forelady of the jury unless she would prefer not to have that job and then you can select one of your number to serve as foreman or forelady to be the chairman of the deliberations and to report the verdict.

You are probably going to find that you have difficulty in remembering some of the testimony or that you have varying recollection about the testimony. If you do, and if you want to have any part of the testimony reread, just send a note out to me through the marshal who will be posted at the door of the jury room, and the court reporter can reread any part of testimony from his notes. Likewise, if you want any of the exhibits in the jury room, or if you want to have the tapes replayed, send a note out to me and we will either send the exhibit in or we will replay the tape. Bear in mind we do have transcripts of the tapes in

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2 evidence, bear in mind also that the defendant has challenged
3 the transcripts in certain respects, and you have heard the
4 tapes so that by now you have probably formed an impression
5 as to whether the transcript was correct as originally
6 typed or whether it should be modified in the respects
7 suggested by the defendant.

8 You may also find that you have different impressions
9 about what I have said in this charge, you can't recall
10 what I have said or I failed to make something clear. If
11 you want any part of the charge repeated or explained I
12 will be glad to do that.

13 Actually, even though the charge has been long,
14 the case is not that complicated because we have the
15 same offense charged in each of the six indictments, the
16 only difference is the portion of the testimony that
17 is involved in the six indictments; and you have to make
18 the same determinations with respect to each part of
19 the testimony: did the defendant testify falsely in that
20 portion of the testimony, and did he do so knowing that
21 what he was saying was false, and did he do so willfully,
22 that is, deliberately, and not inadvertently.

23 One more thing I should add. There have been comments
24 made as to witnesses who might have been called by one side
25 or by the other. Both sides have the power to subpoena

witnesses, not only local witnesses but witnesses from anywhere in the country. If a potential witness could have been called by the government and by the defendant but neither side called him, then you may infer that the testimony of the absent witness might have been unfavorable either to the government or to the defendant or to both, or you might draw no inference at all from the failure to call a witness which was equally available to both sides.

You should bear in mind, however, that there is no duty on either side to call a witness whose testimony would merely be cumulative, that is, merely be more of the same thing, with respect to the testimony of a witness already in evidence. The government, for example, doesn't have to call two witnesses to say the same thing where one witness has already testified and that testimony has not been contradicted.

I will see counsel at the side bar, please.

(At the side bar)

THE COURT: Any exceptions or suggestions?

MR. HOCHHEISER: Yes, your Honor, something perhaps I should have mentioned before, the question of the doctrine of recantation. I think perhaps something should be said with regard to Mr. Kenny's testimony as to his understanding with Mr. Eberhardt and the advice that he gave the defendant,

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and if the defendant honestly believed that he was going to be able to correct the testimony in the next day or so, that that is a factor that should be considered by the jury as to whether he willfully, deliberately made a false statement.

THE COURT: I don't know why I should bring that up, because the defendant was acting with advice of counsel at the time he testified, and counsel has indicated that he was aware of the possibility of recantation at that time, and I don't think you can put the onus of calling the man back to recant on the government. The government was not in a position to know that the defendant had spoken to his attorney and indicated the falsity of the testimony, or that there was any possibility of recantation. There was no reason for the government to call the man back. On the other hand, the defendant's counsel did know that the defendant had conceded the falsity of some of his testimony, and the burden was clearly on him to take the initiative in making sure that the defendant was recalled so that he could recant his earlier testimony.

MR. HOCHHEISER: If Mr. Eberhardt told Mr. Kenny that Mr. Eberhardt was, in fact, going to call him back, I think Mr. Kenny had a right to rely on that. It would be foolish indeed, I think, or it would be silly to call someone and ask for something that someone already told

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you they are going to give you.

THE COURT: When Mr. Eberhardt did not call the defendant back, then Mr. Kenny should have taken the initiative. After a month had gone by, and he hadn't been recalled, Kenny should have called Eberhardt, and said, "I have been informed by my client that his testimony was incorrect, and he wants to recant it." As a matter of fact, I would think legal ethics would require it, not a week or a month later, but immediately when the attorney was advised of the falsity of the testimony.

MR. HOCHHEISER: I understand that but in light of Kenny's testimony --

MR. SUDLER: Are we going to have summation at the side bar by counsel? This is not a proper subject for a side bar. You should take exceptions on the law, but we're having arguments that sound like summation.

THE COURT: You have made your summation and I am not going to charge on that. You may have your exception.

MR. HOCHHEISER: All right. I just felt that in light -- if I may just complete one statement -- in light of Mr. Kenny's testimony that Mr. Eberhardt said that that appearance was merely the first go-round, I think was his testimony, and he was coming back, I think that at least for some period of time the defendant and Mr. Kenny had a right to

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rely on that and expect to be called back, and I think that the jury is entitled to consider that as well.

THE COURT: The indictment came over two months later.

MR. HOCHHEISER: I know.

THE COURT: Go ahead.

MR. HOCHHEISER: Your Honor, I take exception to your Honor's charge where your Honor in commenting on the defendant not taking the stand, you said that the Constitution gives him the right not to take the stand but then you went further and you indicated that that was because he has the right not to take the stand and give evidence against himself; and that may be what the constitution says --

THE COURT: I will clarify that.

MR. HOCHHEISER: Well, I don't think it can be clarified, your Honor. I would certainly ask --

THE COURT: It can be. What is your next point?

MR. HOCHHEISER: All right, I think that that is equivalent to a comment on his failure to take the stand, and I don't think anything you can say can clarify it, but I will go on to the next point.

Your Honor, in describing the indictment, your Honor summed it up as you said, but, unfortunately, your

Honor stated to the jury that Mr. Sudler had read it in the summation and thereby sort of in my judgment put the imprimatur of the Court on that part of Mr. Sudler's summation dealing with the indictment.

THE COURT: Only that part which he quoted directly from the indictment.

MR. HOCHHEISER: I know, but then your Honor used the word "summing up." You said that the Court was going to sum up, and putting the two remarks together, it sort of sounded to me like the Court was endorsing the summation as factually accurate and useful and relied on by the Court, and then the Court termed its own discussion of the subject a summary.

THE COURT: I will say something about that.

MR. SUDLER: Excuse me, your Honor, you said sum up the indictment, not the charge.

MR. HOCHHEISER: Yes. Also in explaining the counts, your Honor, in telling the jury that you were going to explain the indictment to them, each time you referred to the count, you referred to the government's proof; and most respectfully, I feel that it was more like a summary of the government's position than it was an objective explanation of the charges, because instead of explaining the charges you always explained the charges in connection with the govern-

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ment's proof but you didn't explain the charges in that part of your instructions with reference to the defendant's proof, and I thought that was very one-sided.

MR. SUDLER: Excuse me, your Honor, the defendant presented no proof with regard to the falsity of the charges. His defense was that it was a trap set by the government, or that he was incompetent at the time he testified, which you charged.

THE COURT: Yes.

MR. HOCHHEISER: Which goes to the falsity or willfulness.

THE COURT: And I each time said they would have to find beyond a reasonable doubt that the testimony was false and then further find beyond a reasonable doubt all of the other elements that I would discuss in a moment.

MR. HOCHHEISER: That came later in the charge. Concerning the materiality, you said that the forelady told us what the inquiry was about, and that the indictment recites what the inquiry is about, and you, therefore, charged that as a matter of law that it's material, and I still say for the record that that is a factual question, and they don't have to believe that forelady, and I take specific exception to this in view of what I consider to be erroneous ruling that the forelady had some special status in this courtroom,

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a ruling you made in front of the jury, and that she was not subject to the usual rules of cross examination, but she was a special, more objective, more honest witness, and I think that her testimony as to what the inquiry was about is certainly a question of fact that the jury may consider; and I think you took her credibility right out of this case, and I don't think that's right.

THE COURT: It is the only evidence in the case on the point, and that is why I took it out of the case. There is no other evidence concerning the purpose of the grand jury investigation or the scope of that investigation.

MR. SUDLER: Your Honor, may I say something? Your Honor, the only materiality has been and is a matter of law for the Court. In every perjury case -

THE COURT: That is certainly a standard charge.

MR. HOCHHEISER: I know it is a standard charge, but I don't think these are standard facts. That is my problem.

With regard to the last item I have noted here the motive of Assistant United States Attorney Eberhardt, you said there is no excuse or justification for perjury. We discussed that before, your Honor made a ruling, but I reaffirm my position on that at this time.

THE COURT: All right, thank you. Do you have any

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2 exceptions or suggestion?

3 MR. SUDLER: The only thing I would ask that the
4 jury -- you told them that they can have the indictment. I
5 have twelve copies of the indictment if they wish in the
6 jury room.

7 THE COURT: Do you have any objection to their
8 having the indictment?

9 MR. HOCHHEISER: No.

10 THE COURT: I will give them that right now so we
11 won't have to bother. I know they will want that.

12 MR. SUDLER: If Mr. Hochheiser will stipulate
13 I will leave the exhibits with the clerk, so when they
14 call for them, they can take the exhibits.

15 MR. HOCHHEISER: I will also leave mine. That
16 is so stipulated.

17 THE COURT: Thank you.

18 (In open court)

19 THE COURT: I want to clarify my charge in two
20 respects. At one point I referred to the fact that the
21 Constitution gave the defendant the right not to give evidence
22 against himself. That is the wording of the Constitution.
23 I do not want to give you the impression that if the defen-
24 dant had testified in this case, the evidence would have been
25 against himself. That just happens to be the way the Consti-

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2 tution is worded. What it means in our case is simply that
3 this defendant, like every defendant, has the right to remain
4 silent; and you should not draw any inference unfavorable
5 to him from the fact that he chose to remain silent. He
6 did put in evidence, and you should consider his evidence
7 just as you consider all of the other evidence in the case.

8 There was one other point. Can you remind me,
9 Mr. Hochheiser, what it was that I said I would clarify?
10 Let me see your list. I can refresh my recollection.

11 (Pause)

12 THE COURT: In discussing the indictment, and
13 particularly the six separate counts, I indicated to you
14 that I was merely summarizing those portions of the testimony
15 which are quoted in the indictment, and I stated that in
16 the course of his summation, the prosecuting attorney,
17 Mr. Sudler, had read those portions of the testimony just
18 as they are quoted in the indictment. Now by referring to
19 his summation, obviously I didn't mean to give you the im-
20 pression that I agree with anything he said other than the
21 portion of his summation in which he was quoting directly
22 from the testimony as presented in the indictment. You
23 will have to determine this case on the basis of your recollec-
24 tion of the evidence in the case. The summation of both counsel
25 is not evidence in the case. It is merely the views of counsel

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2 as to what they think the evidence has or has not shown.

3 You will determine whether or not the evidence in fact shows
4 that.

5 Let me see your list again, please, Mr. Hochheiser.

6 (Pause)

7 THE COURT: One final thing: in discussing the
8 various counts, I referred to the fact that the government
9 in attempting to prove the falsity of the defendant's
10 testimony as quoted in the six different counts, was relying
11 on various evidence, for example, the testimony of Colbert,
12 or the recording of the conversation between Yagid and Whellan,
13 and so on. Now, I don't mean to suggest to you that that
14 specific evidence that I referred to as having been relied
15 on by the government was all of the evidence in the case.
16 It is only one part of the evidence, and in considering
17 whether or not the defendant's testimony was false, you will
18 consider all of the evidence, not just the government's
19 evidence. You will consider the defendant's evidence, and
20 give both the government's evidence and the defendant's
21 evidence whatever weight or credibility you think it is
22 entitled to.

23 Moreover, as I have told you, falsity is only
24 one of the two things you must determine with respect to
25 each count. You must also determine that the defendant, if

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he gave false testimony, knew at the time he gave it it was false and willfully gave it as false testimony.

All right.

We want to excuse our alternate juror, Mr. Grimes.

(The alternate juror was excused)

THE COURT: Swear the marshal, please.

(A United States Marshal was sworn.)

THE COURT: Counsel have stipulated that you may take into the jury room with you when you begin copies of the indictment. He's prepared twelve copies of the indictment. If you want to see any of the other exhibits, you merely have to ask and they will be sent in to you.

(At 11:45 a.m. the jury retired to deliberate.)

(Recess)

TAGID, CALVIN		50	M	W	077137524	Brooklyn VA
<small>DIAGNOSES: First in medical order, first the established clinical diagnosis, second the probable diagnosis, then in order of clinical importance, other established diagnoses, for which treatment was given. Place letter "V" after diagnosis for responsible for treatment, or place "N" after diagnosis for non-responsible.</small>						ICDA CODE
1. Right mainstem pulmonary embolism. 2. Chronic bronchitis. 3. Service connected nervous disorder with extreme chronic nervousness. 4. ...						491 300.9 777.2 782.2
P.T.V. Coded: 8-13-75 Chart Reviewed: 12						
<small>PERTINENT CLINICAL DIAGNOSES NOTED BUT NOT TREATED (in this column) during current admission.</small>						
<small>OPERATIONS PROCEDURES PERFORMED AT THIS HOSPITAL DURING CURRENT ADMISSION</small>						DATE
1. Pulmonary angiogram. 2. Lung scan. 3. Intravenous pyelogram. 4. Bilateral leg phlebography.						
<small>SUMMARY (Brief statement should include, if applicable, history, pertinent physical findings, course in hospital, treatment given, condition at release, date patient is capable of returning to full employment, period of convalescence, if required, recommendation to follow up treatment, medications, hospital or release, competency opinion when required, rehabilitation potential, and name of referring home, if known.)</small>						
<p>This was the first Brooklyn VA Hospital admission for this 50 year old white male who has a history of a nervous disorder and heavy smoking. He was in fair health until the day of admission. He is a heavy smoker (2 to 3 packs per day) and has been suffering from severe leg cramps upon even the mildest exertion for over one year with dizziness on ambulation at times. He was worked up at the Staten Island Hospital neurologically. EEG and Skull x-rays were within normal limits. He was walking along the street prior to admission when he began to experience a squeezing substernal chest pain radiating to his left arm with nausea and diaphoresis but no vomiting. This pain prevented him from taking a deep breath and he became extremely dyspneic and ashen in color. He frequently has a productive smoker's cough in the morning without hemoptysis or hoarseness. He was admitted to the coronary care unit where serial electrocardiograms and enzymes were within normal limits. He was admitted on 4/22/75. On 4/25/75 the patient was transferred to ward 10E where he complained of frequent leg cramps. Physical examination revealed a sinus tachycardia. The patient began to cough up purulent-looking phlegm and became febrile on 4/30/75 with a leukocytosis and a shift to the left. Antibiotics were started. Within 24 hours patient complained of a sharp ^{neurotic} knife-like chest pains on inspiration and expiration in the left lateral chest wall. The Chest x-ray revealed a platelike atelectasis seen at the left base which had been there for quite some time prior to admission. Intermittent ^{positive} pressure breathing and analgesics were ordered. While in the Intensive Care Unit, the patient received intravenous Heparin. The calves were soft and never revealed any Homan's sign, discoloration or tenderness. There was nothing on observation or palpation, although the patient still complained of severe leg cramps deep in the tibia and posterior soleus muscles. The left chest wall was</p>						
4-22-75	6-18-75	OPT			10E	T. FINE, M.D. Resident

10-100000 6/23/75 LT 6/24/75 Dr

HOSPITAL SUMMARY

CLINICAL RECORD

Report on
or
Continuation of S. F.

(Sign and date)

tender to palpation. There was no friction rub auscultated. On 5/1/75 the patient began to experience hemoptysis with globs of rusty dark bloody sputum in a mucoid background. The patient was readmitted to the Medical Intensive Care Unit where intravenous Heparin was started and a lung scan was ordered. On 5/5/75 a pulmonary angiogram was obtained which revealed a large right mainstem pulmonary embolus with several large branches of the pulmonary artery to the right middle and upper lobes were completely blocked. This compared well with the lung scan obtained on 5/2/75 which revealed a perfusion defect but no ventilation defect in the right mid-lung field and upper lobe. The patient between 5/1/75 and 5/1/75 developed a severe pruritic pain in the right hemi-thorax unrelated to the previous left pruritic pain. The sputum continued to grow out *Diplococcus pneumoniae* Type III. The patient was treated in the Medical Intensive Care Unit with intravenous Heparin for one week and continued on the ward for another week. He was then switched to oral Coumadin. A repeat lung scan done 18 to 21 days later revealed improvement in the circulation to the right lung field. There were bibasilar rales with rhonchi noted throughout the patient's stay. On 5/15/75 the patient no longer had chest pain but there were some nocturnal leg cramps and there was no more hemoptysis. On 5/23/75 phlebograms of both legs were obtained which revealed varicose veins but no evidence of any thrombophlebitis. On 5/24/75 the patient experienced severe pruritic pain requiring Morphine and analgesics. The Temperature ran a low grade to 101.2 for 2 to 3 weeks and patient was placed on oral antibiotics therapy. The patient underwent an I.V.P. in June 1975 which was within normal limits. After the 2nd and 3rd radio-opaque study using Hypaque, the patient developed a rash with peripheral eosinophilia and fever. This was thought to be a drug reaction related to the Hypaque. Bone Marrow was within normal limits. All throughout the patient's stay, he was extremely hyper and very worried and suffered from gross insomnia and he definitely was experiencing and going through a severe anxiety throughout his entire stay. He has some kind of Service connected disability for anxiety neurosis and this was aggravated during his stay and for good reason related to his medical condition. He was treated with large doses of oral Valium 10 mgs. t.i.d. to q.i.d. with intramuscular sedatives in addition with only moderate effect. The patient lost 25 lbs. during his 8 weeks of hospitalization. The patient underwent muscle biopsy because of the eosinophilia to rule out trichinosis. The muscle biopsy was within normal limits. Patient underwent liver scan which revealed slight hepatic megaly. Lab: Serum Cholesterol, serum lipid profile within normal limits. On

(Continue on reverse side)

PATIENT'S IDENTIFICATION (To be filled in with patient's name, date of birth, and the grade, date, hospital number, etc.)

HOSPITAL NO.

WARD NO.

NAMED, CALVIN

097187984

10E

REPORT ON

or CONTINUATION OF

Standard Form 502
10-114

CLINICAL RECORD

Report on

of

Continuation of S. F.

(Strike out one line) (Specify type of examination or data)

(Sign and date)

discharge, Hgb. 13.3; Hct. 40; mild eosinophilia on discharge. Prothrombin Time will be maintained at twice normal lab values. Chest X-ray 5/30/75 revealed no active disease in the chest at this time. There was a residual ~~plate like~~ atelectasis in the left lower lung field. The patient's diaphragm's are well outlined. There are interstitial changes noted bilaterally in the bases and the costophrenic angles are clear. Sputum on discharge revealed normal flora. SMA-6 and SMA-12 within normal limits. Cholesterol 188. Serum febrile agglutinins negative. Serum anti-nuclear antibody times 3 was negative. Electrocardiogram revealed "Q" wave in lead III, varying "S" waves in lead I throughout the admission, however, this is non-specific. Multiple sputums revealed no malignant cells. Blood Gases on room air revealed: pH=7.46; pO2=86; pCO2=26; pCO2=18 on admission. One month later the Blood Gases were within normal limits on 40% Oxygen. The patient is completely disabled from heavy work due to his severe ~~dyspnea~~ ^{cardiac asthma} on exertion and leg cramps. The patient will be maintained on oral anti-coagulants indefinitely with frequent and periodic re-examination with prothrombin times done on a monthly basis. ORAL tranquilizers will be continued due to the patient's severe anxiety. The patient has discontinued smoking cigarettes and will presumably continue to do so. Discharge Medications include Coumadin 5 mgs. daily; Robitussin p.r.n.; Colace b.i.d.; Valium 10 mgs. t.i.d.; Vitamin B-Complex and Multi-Vitamins one daily; Pavabid 150 mgs. q.12 hours; Dalmane 30 mgs. for sleep; Nembutal p.r.n. occasionally for sleep; Surfak p.r.n. Patient is discharged to the Cardiac Clinic to return in 3 weeks. Patient is completely disabled from active labor. He is only capable of sedentary occupation. Patient is disabled also from work requiring mental stress due to his anxiety neurosis.

APPROVED:

H. FENICHEL, M.D. Staff Cardiologist

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PATIENT IDENTIFICATION (Do not fill in with patient's name, age, sex, middle grade, date, hospital or medical facility)

REGISTERED

WARD NO.

YAGID, CALVIN 097187934 102

REPORT ON

CONTINUATION OF

STANDARD FORM 100

Organized Crime and Racketeering Field Office
One St. Andrews Plaza - 3rd Floor
New York, New York 10007

October 20, 1975

Iraj Iraj, M.D.
142 Joralemon Street
Brooklyn, New York

Dear Dr. Iraj,

This is to confirm that Mr. Calvin Yagid will be at your office at 142 Joralemon Street, Brooklyn, New York for a physical examination on Monday, November 3rd at 3:00 p.m. Enclosed is a copy of the Court Order as well as a report of Mr. Yagid's condition as of June 18, 1975.

You should be aware of the fact that Mr. Yagid entered the Veterans Hospital again in September of this year. You should also know that on September 12, 1975 his physician, Dr. Fenichel, advised me that in his judgment Mr. Yagid would be sufficiently recuperated to stand trial on or after November 1st.

A trial date is now scheduled for November 10, 1975. The purpose of our asking you to examine Mr. Yagid is to have you confirm that he is physically able to stand trial for a two to three day period or in the event that this is not the case to so report.

After your examination would you please communicate your opinion to the Court, in writing. I would also appreciate receiving a telephone call from you at your earliest convenience.

Sincerely,

BARBARA S. AMBLER
Special Attorney

Incls. 2: As stated

CC: Lawrence Hochheiser

BSA:mle

IRAJ IRAJ, M.D., P.C.
142 JORALEMON STREET
BROOKLYN, N. Y. 11201
TELEPHONE 237-8334

November 12, 1975

Honorable William C. Conner,
United States District Judge
U.S. Department of Justice
One St. Andrews Plaza Third Floor
New York, New York 10007

Dear Judge Conner:

Re: Calvin Yagid
474 Elverten Avenue
Staten Island, New York 10308.

The above patient was examined in my office on November 7, 1975. His history actually dates back to 1945 at which time he was considered disabled due to anxiety neurosis. He also had chronic obstructive pulmonary disease with recurrent respiratory tract infections. He has also been diagnosed to have mild hypertension and questionable ischemic heart disease. Recently he has been hospitalized with massive pulmonary embolism which was confirmed by lung scan and angiographic studies.

He is currently on a number of different medications which have been prescribed by different physicians. He complains of persistent cough, marked exertional dyspnea and occasional chest pain for which nitroglycerine is usually helpful.

He is an exceptionally apprehensive individual who can hardly sit for more than 30 seconds or answer questions directly and to the point. He shows evidence of flight of ideas.

On physical examination his vital signs are as follows: Temperature 99.2, pulse rate ranging between 96 and 130 per minute, weight 174 pounds and his blood pressure was 155/100.

There is some hyperemia of the nasopharynx, heart is regular and the pulse rate changes from minute to minute. There are no gallops and the heart sounds essentially normal. There are some bronchi scattered over both lung fields. Abdomen is soft with mild right upper quadrant fullness and his electrocardiograph shows sinus tachycardia and non-specific changes.

Conclusion: Chronic obstructive pulmonary disease with recent pulmonary embolism, marked anxiety neurosis, ? mild hypertension.

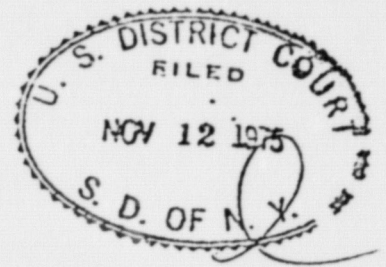
At this time from the available clinical data patient is able to withstand two to three days of crisis. However, it is my opinion that he should be judged competent by a psychiatrist. Also the possibility of persistent tachycardia (due to anxiety or emotional stress) producing cardiac difficulties should be considered.

(Very truly yours,

Iraj Iraj, M.D.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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UNITED STATES OF AMERICA :

- v - :

CALVIN YAGID, :

Defendant. :

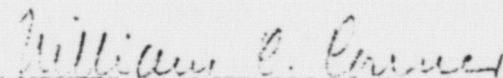
ORDER

74 Cr. 1216

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Application having been made before me by the United States of America, for an Order appointing a physician to examine the defendant, CALVIN YAGID, as to his mental condition in order to determine whether the defendant is presently competent to stand trial and able to properly assist in his own defense in the proceedings against him.

IT IS HEREBY ORDERED THAT the defendant, CALVIN YAGID, is to undergo a full and complete mental examination, on the 13th day of November, 1975, at 3:00 p.m. by David Abrahamsen, M.D. at 1035 Fifth Avenue, Apartment 3B, New York, New York.


WILLIAM C. CONNER
United States District Judge

DATED: New York, New York
November 11, 1975.

CERTIFICATE OF SERVICE

Aug 16 , 1976

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

Erica Ginsberg